

**TITLE 19
CHAPTER 25
PART 8**

**NATURAL RESOURCES AND WILDLIFE
ADMINISTRATION AND USE OF WATER – GENERAL PROVISIONS
UNDERGROUND STORAGE AND RECOVERY**

19.25.8.1 ISSUING AGENCY: Office of the State Engineer
[19.25.8.1 NMAC - N, 01-31-2001]

19.25.8.2 SCOPE: These regulations govern the application process, the hydrologic, technical and financial capability report requirements, and the permit terms and conditions for projects authorized under the Ground Water Storage and Recovery Act (the “Act”), NMSA 1978, 72-5A-1 through 72-5A-17 (1999 Supp.). These regulations shall not be construed to limit or otherwise alter the jurisdiction, power, or authority of the state engineer.
[19.25.8.2 NMAC - N, 01-31-2001]

19.25.8.3 STATUTORY AUTHORITY: NMSA 1978, 72-5A-6(D) (1999)
[19.25.8.3 NMAC - N, 01-31-2001]

19.25.8.4 DURATION: Permanent
[19.25.8.4 NMAC - N, 01-31-2001]

19.25.8.5 EFFECTIVE DATE: January 31, 2001.
[19.25.8.5 NMAC - N, 01-31-2001]

19.25.8.6 OBJECTIVE: The objective of these regulations is to govern the proceedings before the state engineer to ensure the expeditious and orderly handling of applications and administration matters related to the Act.
[19.25.8.6 NMAC - N, 01-31-2001]

19.25.8.7 DEFINITIONS: Unless defined below or in a specific section, all other words used in these regulations shall be given their customary and accepted meanings.

A. Area of hydrologic effect: The underground area where the water is stored and located, hydrologically connected surface waters, adjacent ground water areas in which water rights exist that may be impaired, the land surface above the underground areas, and any additional land surface used for seepage or infiltration.

B. Capability Report: The short name for the Hydrologic, Technical, and Financial Capability Report (detailed in Appendix A) to accompany an application for Underground Storage and Recovery.

C. Project: A permitted, engineered facility specifically designed, constructed, and operated to add measured volumes of water by injection or infiltration to an aquifer or system of aquifers, to store the water underground, and to recover the stored water for beneficial use.

D. Stored Water: The water that has been stored underground for the purpose of recovery.
[19.25.8.7 NMAC - N, 01-31-2001]

19.25.8.8 LIBERAL CONSTRUCTION: These regulations shall be liberally construed to carry out the provisions of the Act.
[19.25.8.8 NMAC - N, 01-31-2001]

19.25.8.9 PURPOSE OF THE ACT: In 1999, the New Mexico Legislature enacted the Act to allow governmental entities to store surplus supplies of water underground and to withdraw the recoverable amount at a later date for use by the governmental entity. In adopting the Act, the Legislature found that:

A. Conjunctive use and administration of both surface and ground waters are essential to the effective and efficient use of the state’s limited water supplies; and

B. Ground water recharge, storage, and recovery have the potential to:

(1) Offer savings in the cost of capital investment, operation and maintenance, and flood control, and may improve water and environmental quality.

(2) Reduce the rate at which ground water levels will decline and may prevent overstressing or dewatering aquifer systems.

(3) Promote conservation of water within the state.

(4) Serve the public welfare of the state.

(5) Lead to more effective use of the state's water resources.

[19.25.8.9 NMAC - N, 01-31-2001]

19.25.8.10 AUTHORIZED APPLICANTS: Only governmental entities defined as Indian nations, tribes, or pueblos, or state political subdivisions, including municipalities, counties, acequias, irrigation districts, or conservancy districts may apply for a permit.

[19.25.8.10 NMAC - N, 01-31-2001]

19.25.8.11 AUTHORIZED PROJECTS: These regulations cover artificial recharge, underground storage, and water recovery projects. These regulations do not cover the incidental recharge to an aquifer (such as from septic tanks or unlined ditches).

[19.25.8.11 NMAC - N, 01-31-2001]

19.25.8.12 PERMIT REQUIRED: A governmental entity may only construct or operate an artificial recharge, storage, and recovery project in the state of New Mexico after receiving a permit from the state engineer. One permit shall be granted for each project.

[19.25.8.12 NMAC - N, 01-31-2001]

19.25.8.13 PRE-APPLICATION MEETING AND PROJECT PROPOSAL: Prior to submission of an application, every applicant is required to attend a pre-application meeting with representatives of the state engineer. At the pre-application meeting, the applicant shall provide a written project proposal that summarizes the project goals and objectives and describes the method(s) to be used to achieve the project goals. The following information, unless considered inappropriate by the state engineer and the applicant, is to be included in the project proposal and discussed at the pre-application meeting:

- A. The mapped location of the proposed project and related facilities which shows existing and planned features of the site
- B. Description of the purpose and scope of the proposed project
- C. Description of the estimated area of hydrologic effect of the project
- D. Description of the purpose and scope of the pilot/demonstration project
- E. Description of the estimated area of hydrologic effect of the pilot/demonstration project
- F. Description of the proposed method of recharge (i.e. aquifer storage and recovery wells, injection wells, and infiltration basins)
- G. Topographic map which shows the location of surface water bodies (natural and man-made), canals and ditches, wells, other recharge and recovery sites, and areas within the estimated area of hydrologic effect where there is potential for impairment to water rights or harm to land owners
- H. Relevant information on hazardous waste or other contamination sites, potential environmental impacts, and plans for mitigating any harmful effects
- I. Information on existing wells, springs, seeps, and wetlands and a description of the methods that will be used to analyze possible impairment and harm from the artificial recharge, storage, and recovery project
- J. Source water characterization including flow rate, total volume, reliability of deliveries, chemical composition, and conveyance methods
- K. Water characterization of the ambient water in the aquifer in which the recharged water will be stored
- L. Scope of work for proposed hydrologic investigations to include: the installation of monitoring wells, infiltration testing, methodologies for obtaining aquifer parameters, ground water level and quality monitoring plans, surface water (including springs and base flow) flow and quality measurements, subsidence measurements, and ground water and/or surface water modeling
- M. Discussion of the proposed method to calculate the amount of recoverable water in storage
- N. Discussion of the proposed method of recovery
- O. Hydrogeologic information:
 - (1) Depth to ground water and elevation of ground water (or potentiometric surface of ground water) in the area of hydrologic effect
 - (2) Perched ground water conditions
 - (3) Ground water flow direction
 - (4) A description of the aquifer selected for storage, including its areal extent and any associated confining or semi-confining layer(s)

- (5) Rock and soil types in the vicinity of the site
- (6) Subsurface lithology and mineralogy/geochemistry in the vicinity of the site
- (7) Aquifer test parameters
- (8) Ground water quality data and the methods used to estimate their values
- (9) Wells within the estimated area of hydrologic effect
- (10) Subsidence data
- P. Planned duration of the project and its facilities
- Q. Secondary uses associated with the facility, if applicable, such as recreation, water quality treatment, or wetlands
- R. Relevant information on past and present land use
- S. Demonstration that the applicant has a valid water right and will meet all relevant state and federal rules and regulations
- T. A file stamped copy of the Notice of Intent to Discharge (per Section 1201 of the New Mexico Water Quality Control Commission Regulations) filed with the New Mexico Environment Department. [19.25.8.13 NMAC - N, 01-31-2001]

19.25.8.14 APPLICATION FOR PERMIT: The application procedure for an Underground Storage and Recovery Permit is a two-step process.

A. Pilot/Demonstration Project: The applicant shall file a complete description of the pilot/demonstration project on a form prescribed by the state engineer, a capability report for the pilot/demonstration project, and a preliminary description of the full-scale project (the preliminary description should attempt to estimate the area of hydrologic effect and the scope and purpose of the full-scale project as closely as possible). After making the initial filing, the applicant shall proceed to meet the requirements set forth in sections 15 through 22 of these regulations for the pilot/demonstration project. The information required for a pilot/demonstration project capability report is the same as that for a full-scale project. However, during the course of developing the capability report for a pilot/demonstration project it may become apparent that not all the necessary information is available. In this case, an abbreviated capability report may be submitted. In cases where data does not exist or is lacking, the applicant must indicate how they plan on collecting the necessary data during the pilot/demonstration project. The data required for the pilot/demonstration project are dependent on the duration, volume, purpose, operation, and the geologic and hydrologic complexity of the project.

B. Full-Scale Project: Upon completion of a successful pilot/demonstration project, the permittee shall prepare a complete description of the full-scale project on a form prescribed by the state. The description shall be accompanied by the findings from the pilot/demonstration project and a capability report for the full-scale project that is based on the information gathered during the pilot/demonstration project. After filing their application for a full-scale project, the applicant shall proceed to meet the requirements set forth in sections 15 through 22 of these regulations for the full-scale project. However, the applicant shall not have to publish a legal notice for the full-scale project if the state engineer determines that the legal notice published after the filing of the pilot/demonstration project application reasonably informed the public of the final proposed full-scale project. A revised notice shall be published if the state engineer determines that the scope of the full-scale project has significantly changed since the publication of the original notice.

C. Filing Fee: A complete application shall be filed with the proper filing fee of five thousand dollars (\$5000.00), payable at the time the application is filed, plus five dollars (\$5.00) per acre-foot of the annual capacity of the full-scale artificial recharge, storage, and recovery project, payable upon the filing of the full-scale project. The total application fee shall not exceed fifty thousand dollars (\$50,000). [19.25.8.14 NMAC - N, 01-31-2001]

19.25.8.15 PILOT OR DEMONSTRATION PROJECT: A pilot or demonstration project is a prerequisite of a full-scale project.

A. Definitions:

(1) Demonstration project: A demonstration project is considered a full-scale test of a project, in part or in whole, for a limited period of time. An example of a demonstration project is testing a full-size aquifer storage and recovery well.

(2) Pilot Project: A pilot project is considered a scale model test of a full-scale project.

B. The purposes of a pilot/demonstration project are to determine if a full-scale, long-term project is hydrologically feasible and to collect and evaluate the operational, hydrologic, and geologic data needed to support

an application for permit for a full-scale project. The source water used in a pilot/demonstration project should be from the same source proposed for the full-scale project.

C. A pilot/demonstration project will enable a governmental entity to collect and evaluate technical information to determine the feasibility of a full-scale, long-term project. A pilot/demonstration project permit will allow a governmental entity to store small amounts of water for a limited period of time in order to generate the data necessary for a full-scale project. A pilot/demonstration project permit will be limited to a volume and duration determined acceptable by the state engineer. The water stored under a pilot project is considered recoverable.

D. If an applicant has completed a pilot/demonstration type project prior to the enactment of the Act, and the state engineer is satisfied that the applicant's project fulfills the essential purposes of the state engineer prescribed pilot/demonstration project, then the state engineer will accept the applicant's pilot/demonstration type project and its results in support of a full-scale project.

[19.25.8.15 NMAC - N, 01-31-2001]

19.25.8.16 CAPABILITY REPORT: The hydrologic, technical, and financial capability report shall include the following information:

- A. Executive Summary
- B. Project Objectives
- C. Evidence of Technical Capability
- D. Evidence of Financial Capability
- E. Evidence of Hydrologic Feasibility
- F. Area of Hydrologic Effect of Proposed Artificial Recharge, Storage, and Recovery Project
- G. Hydrogeologic Characterization of the Area of Hydrologic Effect
- H. Evaluation of Impairment to Water Rights and Harm to Owners of Land Within the Area of

Hydrologic Effect

- I. Validity of the Source Water Right
- J. Site Description
- K. Facility Description
- L. Facility Design
- M. Facility Operation and Maintenance
- N. Hydrogeographic Characterization of the Area of Hydrologic Effect
- O. Effects Created by a Underground Storage and Recovery Project
- P. Water Level Monitoring Plan
- Q. Description of Water Quality Monitoring and Treatment Plans Required by a State or Federal

Agency or Department

- R. Contingency Plan
- S. All other relevant information detailed in Appendix A

[19.25.8.16 NMAC - N, 01-31-2001]

19.25.8.17 INITIAL REVIEW OF APPLICATION: After receipt of an application, the state engineer will conduct an initial review of the application. If the state engineer determines that an application is incomplete, defective as to form, is not in compliance with these regulations, or if he determines that it may be necessary to limit the duration of the permit (see Section 26), he shall return the application to the applicant. The applicant shall provide all information required by the state engineer. An application that is determined by the state engineer to be complete, in compliance with these regulations, and in recognition that any issued permit may be limited in duration, will be accepted for filing. The state engineer will advise the applicant in writing when an application has been accepted for filing.

[19.25.8.17 NMAC - N, 01-31-2001]

19.25.8.18 NOTICE--PUBLICATION: Within thirty (30) days after receipt of a letter from the state engineer informing the applicant that their application has been accepted for filing, the applicant shall submit a notice for publication to the state engineer for review.

A. The notice shall set forth the contents of the application in a form containing the following information:

- (1) The name and address of the applicant;
- (2) The legal and common descriptions (per NMSA 1978, Section 14-11-10.1) of the location of the proposed project facilities and the area of hydrologic effect;

- (3) A brief description of the pilot/demonstration project.
- (4) A brief description of the proposed full-scale project, as appropriate, including the capacities;
- (5) The requirements for a protest, as set forth in Section 20 hereafter;
- (6) Disclosure that protests to the application shall be filed within ten (10) days after the date of the last publication of the notice; and
- (7) The day of the last publication (to be on the notice when published);
- (8) All other relevant information required by the state engineer.

B. The state engineer will review the notice and return it to the applicant within thirty (30) days of receipt with all corrections and additions noted. After making all changes to the notice required by the state engineer, the applicant shall publish the notice once a week for three (3) consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the project. The cost of the publication shall be borne by the applicant.
[19.25.8.18 NMAC - N, 01-31-2001]

19.25.8.19 PUBLICATION – EXPENSE: The completeness and accuracy of the notice for publication is the responsibility of the applicant. If the published notice contains substantive errors, a revised notice shall be published at the expense of the applicant.
[19.25.8.19 NMAC - N, 01-31-2001]

19.25.8.20 PROTESTS: A person may protest such an application by filing a protest alleging how the granting of the application will substantially and specifically affect the protestant and that it will impair the protestant’s water right and/or be contrary to the conservation of water within the state and/or be detrimental to the public welfare of the state. The state or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file a protest. A protest shall be in writing and filed with the state engineer, Post Office Box 25102, Santa Fe, New Mexico 87504-5102. The protest shall state the name and mailing address of the protestant, identify the grounds for the protest, and contain the signature of the protestant or an authorized representative. The state engineer will provide the applicant with a copy of all filed protests to encourage the parties to reach a resolution. The applicant will provide each protestant with a copy of its pilot/demonstration project permit so that the protestant(s) may develop independent information during the pilot/demonstration project. The applicant will further provide each protestant with a copy of its full-scale project application at the time the application is filed with the state engineer.
[19.25.8.20 NMAC - N, 01-31-2001]

19.25.8.21 HANDLING OF PROTESTS - HEARING: If any protests remain at the time the applicant has filed for its full-scale project, a hearing shall be conducted pursuant to the state engineer Hearing Procedures (19 NMAC 25.2). The state engineer will notify the applicant and protestant(s) in writing of the date of the prehearing conference.
[19.25.8.21 NMAC - N, 01-31-2001]

19.25.8.22 BURDEN OF PROOF: Prior to the state engineer approving an application for Underground Storage and Recovery, the applicant must meet its burden of proof. The applicant has the burden of proving:

- A. the applicant has the technical and financial capability to construct and operate the project;
- B. the project is hydrologically feasible;
- C. the project will not impair existing water rights or the state’s interstate obligations;
- D. the project will not be contrary to the conservation of water within the state;
- E. the project will not be detrimental to the public welfare of the state;
- F. the applicant has a valid water right for the recharge water quantified by one of the following legal processes:
 - (1) a water rights adjudication;
 - (2) a consent decree;
 - (3) an act of congress, including a negotiated settlement ratified by congress;
 - (4) a contract pursuant to the Colorado River Storage Project Act, 43 U.S.C. Section 620 (1986 and Supp. 1999); or
 - (5) an agreement with an owner who has a valid water right subject to an application for a change in purpose, place of use or point of diversion

G. the applicant will obtain all other permits for the project required by state and federal law. A project shall not be operated under the Act until an applicant has obtained all other state and federal permits required for the project; and

H. the project will not impair water rights or cause harm to owners or land within the area of hydrologic effect.

[19.25.8.22 NMAC - N, 01-31-2001]

19.25.8.23 ACTION BY THE STATE ENGINEER ON THE APPLICATION: If no timely protest has been properly filed or remains standing, the state engineer will, upon finding that the application meets the requirements of the Act and the Rules and Regulations of the state engineer, issue a permit to the applicant to construct and operate the project to artificially recharge, store, and recover all or part of the waters applied for. All applications will be conditionally approved as a pilot/demonstration project permit (see Section 15) unless the state engineer has granted a variance. The state engineer will deny an application if there is reason to believe that the granting of the application would impair existing water rights or the state's interstate stream obligations, cause harm to land owners within the area of hydrologic effect, be contrary to the conservation of water within the state, or would be detrimental to the public welfare of the state.

[19.25.8.23 NMAC - N, 01-31-2001]

19.25.8.24 APPEAL: Upon receipt of notice from the state engineer of the decision made on the application, the applicant may, within thirty (30) calendar days of such receipt, request in writing that the decision be set aside. The request that the action be set aside shall specify whether the applicant will submit information for reconsideration or will request that the matter proceed to hearing through the state engineer hearing process (19 NMAC 25.2).

[19.25.8.24 NMAC - N, 01-31-2001]

19.25.8.25 PERMIT -- CONTENTS: The state engineer will grant an Underground Storage and Recovery Permit and monitor compliance with the permit in the exercise of the full oversight authority provided by the Act and as otherwise delegated to the state engineer by the laws of New Mexico. The state engineer permit shall automatically terminate if the permittee fails to comply with or maintain all other state and federal permits required for the project. A permit issued will set forth:

- A. the name and mailing address of the governmental entity to which the permit has been issued;
- B. the name of the declared underground water basin in which the project will be located;
- C. the plan of operation and capacity of the project;
- D. the monitoring program required;
- E. duration of permit (see section 26)
- F. all conditions required by these regulations and as otherwise deemed appropriate by the state engineer;
- G. other relevant information the state engineer determines to be appropriate.

[19.25.8.25 NMAC - N, 01-31-2001]

19.25.8.26 PERMIT DURATION AND RENEWAL, IF NECESSARY: The state engineer will determine whether the circumstances necessitate an Underground Storage and Recovery Permit being limited in duration. If the state engineer limits the duration of a permit, a renewal shall be requested in writing by the permittee and filed with the state engineer at least one year prior to the expiration date of the permit. Failure to file the request for permit renewal in a timely manner may result in the expiration of the permit. A permit may be renewed multiple times. Upon expiration of a permit, the permittee has the right to withdraw all waters within storage that are recognized and approved by the state engineer as being recoverable.

[19.25.8.26 NMAC - N, 01-31-2001]

19.25.8.27 MODIFICATION OF PROJECT PERMIT: The state engineer retains jurisdiction over every permit issued under these regulations and may modify its conditions to prevent impairment to water rights, to prevent harm to land owners, to prevent detriment to the public welfare of the state, and to prevent actions that are contrary to the conservation of water within the state. The conditions of a permit may also be modified to meet the purposes of the Act, to meet the original intent of the permit, or to account for a change to the scope of a project resulting from information gathered during the operation and maintenance of a full-scale project. A revised notice must be published if the state engineer determines that the scope of the full-scale project has significantly changed

as a result of the modification. The state engineer will set aside his action if the permittee requests in writing that the action be set aside for reconsideration or for hearing through the state engineer hearing process (19 NMAC 25.2). The request from the permittee must be filed within thirty (30) calendar days of receipt of notice from the state engineer that a condition of the permit has been modified. The permittee must specify the basis for the request. The Water Rights Division will review a request for reconsideration and a request for hearing will be forwarded to the Administrative Litigation Unit.
[19.25.8.27 NMAC - N, 01-31-2001]

19.25.8.28 **CHANGE OF OWNERSHIP OF PERMIT:** A permit issued under these regulation may be changed in ownership to another governmental entity upon the filing of an application with the state engineer for Change of Ownership. The Change of Ownership shall be approved if the state engineer determines that all provisions of these regulations will be met. If approved, a Change of Ownership will include conditions deemed appropriate by the state engineer.
[19.25.8.28 NMAC - N, 01-31-2001]

19.25.8.29 **STORED WATER NOT AVAILABLE FOR APPROPRIATION - STORED WATER NOT SUBJECT TO FORFEITURE:** Water stored in an aquifer for subsequent diversion for beneficial use pursuant to these regulations is not available for appropriation and is not subject to forfeiture pursuant to NMSA 1978, 72-5-28 (1907) or 72-12-8 (1931).
[19.25.8.29 NMAC - N, 01-31-2001]

19.25.8.30 **USE OF RECOVERED WATER:** A permittee may use water recovered only for the same place(s) and purpose(s) of use for which the diversion of the water was authorized prior to storage unless a permit to change the place(s) and/or purpose(s) of use has been issued by the state engineer.
[19.25.8.30 NMAC - N, 01-31-2001]

19.25.8.31 **STORAGE ACCOUNT – LIMIT ON AMOUNT OF WATER RECOVERED:** Based on the information provided in the capability report, and as reported by the permittee pursuant to Section 32, the state engineer will establish a storage account for each project. If the project includes stored water from more than one source, a sub-account will be established for each source. A permittee may recover only the amount of water, as recognized and approved by the state engineer, that has reached the aquifer, remained within the area of hydrologic effect, and may be recovered without impairment to water rights or harm to land owners within the area of hydrologic effect, unless such impairment and harm is mitigated by a method acceptable to the state engineer. The permittee is solely responsible for protecting their stored water.
[19.25.8.31 NMAC - N, 01-31-2001]

19.25.8.32 **ANNUAL REPORT TO STATE ENGINEER:** Each permittee shall file an annual report with the state engineer. Upon submission of the annual report to the state engineer, the permittee shall file an annual fee (subject to amendment) in the amount of fifty cents (\$0.50) per acre-foot of water placed in storage during the period of time covered by the annual report. The annual report shall include:

- A. the total quantity of water stored and recovered under the permit
- B. the amount of water stored and recovered during the previous calendar year
- C. a discussion on the water quality of the recharge water, the water in the receiving aquifer, and the recovered water
- D. measurements of the static level of the water table (or potentiometric surface) within the area of hydrologic effect;
- E. discussion on effects to surface water, including springs, seeps, and wetlands
- F. discussion on the operation and maintenance of the facilities
- G. discussion on the development of the project facilities
- H. discussion of changes to estimates or parameters used in the capability report
- I. discussion of any other revisions to the capability report
- J. discussion on permittee's compliance with all other relevant state and federal permits required to operate the artificial recharge, storage, and recovery project;
- K. list of the expiration dates for all other state and federal permits required to operate the recharge, storage and recovery facility

- L. list of all significant deviations between monitored and modeled results for water level and water quality analysis
 - M. discussion of recommendations for changes to the monitoring program or the operation and maintenance of the site facilities that may be implemented upon approval by the state engineer
 - N. all other relevant information requested by the state engineer
 - O. a sworn affidavit attesting to the truthfulness and accuracy of the report
- [19.25.8.32 NMAC - N, 01-31-2001]

19.25.8.33 PERMIT REVIEW: The permittee shall attend a permit review meeting with a representative of the state engineer on an annual basis. The permit review meeting should coincide with the submittal of the annual report.

[19.25.8.33 NMAC - N, 01-31-2001]

19.25.8.34 PENALTY FOR FAILURE TO FILE ANNUAL REPORT: The annual report shall be maintained on a calendar year basis and shall be filed with the state engineer no later than March 31 for the preceding calendar year. If a permittee fails to file an annual report by the deadline established on the permit, the state engineer may assess and impose a penalty of Five Hundred Dollars (\$500) for each month or portion of a month that the report is not filed. The total penalty assessed annually pursuant to this subsection shall not exceed Five Thousand Dollars (\$5,000).

[19.25.8.34 NMAC - N, 01-31-2001]

19.25.8.35 FORM OF REPORTS: All records and reports required to be maintained and filed pursuant to these regulations shall be in a form acceptable to the state engineer.

[19.25.8.35 NMAC - N, 01-31-2001]

19.25.8.36 INVESTIGATION OF A PROJECT BY THE STATE ENGINEER: The state engineer may at any time investigate and review a project to determine if the permittee is complying with the terms and conditions of the permit. The state engineer has the authority and duty to enter upon, and to order the project owner to permit the entry upon, private property at any reasonable time to inspect the various means or proposed means of artificial recharge, storage, or recovery, to observe well construction and plugging, to read and verify the accuracy of meters and other measuring devices, and to inspect records.

[19.25.8.36 NMAC - N, 01-31-2001]

19.25.8.37 SHOW CAUSE ORDER: Except as otherwise provided herein, if the state engineer has reason to believe that a permittee has violated a provision of the Act, or a condition of their permit, or a rule or regulation, the state engineer may issue a written notice directing that the person or governmental entity appear and show cause, at a hearing held before the state engineer not less than fifteen (15) days after receipt of the notice, why the person or governmental entity should not be ordered to cease and desist from the violation. The notice shall inform the person or governmental entity of the date, time and place of the hearing, and the consequences of the person's or governmental entity's failure to appear at the hearing.

[19.25.8.37 NMAC - N, 01-31-2001]

19.25.8.38 CEASE AND DESIST ORDER: If the state engineer finds that a person or governmental entity is constructing or operating a project in violation of the Act, the state engineer may issue a temporary order directing the person or governmental entity to cease and desist the construction or operation pending final action by the state engineer. The order shall include written notice to the person or governmental entity of the date, time and place where the person or governmental entity shall appear at a hearing before the state engineer to show cause why the temporary order should be vacated. The hearing shall be held not less than fifteen (15) days after the date of the order and otherwise in accordance with the hearing procedures (19 NMAC 25.2).

[19.25.8.38 NMAC - N, 01-31-2001]

19.25.8.39 ISSUANCE OF ORDER: After a hearing held pursuant to Sections 37 and 38, or after the expiration of the time to appear, the state engineer shall issue a decision and order in a form consistent with the hearing procedures under 19 NMAC 25.2. If the state engineer determines that a violation has occurred, the decision and order may include one or more of the following: a determination of violation, an order to cease and desist, a recommendation of a civil penalty, and an order directing that positive steps be taken by the permittee to

abate or ameliorate any harm or impairment arising from the violation. Any person or governmental entity affected by such decision may appeal to the district court pursuant to NMSA 1978, 72-7-1.
[19.25.8.39 NMAC - N, 01-31-2001]

19.25.8.40 CONTINUING VIOLATION: If a person or governmental entity continues a violation after the state engineer has issued a decision and order pursuant to Section 39, the state engineer may apply for a temporary restraining order or a preliminary or permanent injunction from the district court. Such action does not preclude the state engineer from seeking other forms of relief or enforcement against a violator.
[19.25.8.40 NMAC - N, 01-31-2001]

19.25.8.41 PENALTIES: A person or governmental entity determined to be in violation of the Act, the terms or conditions of a permit issued, or the rules and regulations of the state engineer may be assessed a civil penalty. An action to recover penalties pursuant to this section shall be brought by the state engineer in the district court for the County in which the violation occurred. The civil penalty shall be in an amount not exceeding:

A. One Hundred Dollars (\$100) per day of violation not directly related to the illegal recovery or use of stored water; or

B. Ten Thousand Dollars (\$10,000) per day of violation directly related to the illegal recovery or use of stored water.

[19.25.8.41 NMAC - N, 01-31-2001]

19.25.8.42 PERMIT – REVOCATION AND/OR SUSPENSION: The state engineer may permanently revoke or temporarily suspend a permit for good cause after an investigation and hearing pursuant to the provisions of 19 NMAC 25.2. Notice shall be sent by certified mail to the permittee at least thirty (30) days before any hearing on a revocation or suspension based on the permittee’s alleged failure to comply with the terms and conditions of the permit. Upon revocation of a permit by the state engineer, the permittee has the right to withdraw all waters within storage that are recognized as recoverable. The method of withdrawal must be acceptable to the state engineer.

[19.25.8.42 NMAC - N, 01-31-2001]

19.25.8.43 CONSERVATION FEE EXEMPTIONS: Conservation fees collected pursuant to NMSA 1978, 74-1-13 (1993) shall be charged only on water that is treated and stored underground and not on the same water subsequently recovered.

[19.25.8.43 NMAC - N, 01-31-2001]

19.25.8.44 OBLIGATIONS TO INDIAN NATIONS, TRIBES OR PUEBLOS: Nothing in these regulations shall be construed to impair the rights of Indian nations, tribes or pueblos or affect the obligations of the United States to them.

[19.25.8.44 NMAC - N, 01-31-2001]

19.25.8.45 NON-EXEMPTION FROM PRIOR APPROPRIATION DOCTRINE: Unless required by interstate obligations, nothing in these regulations shall be construed to exempt stored water from the rule that priority in time shall give the better right, pursuant to Chapter 72 NMSA 1978, or that priority of appropriation shall give the better right, pursuant to Article 16, Section 2 of the Constitution of New Mexico.

[19.25.8.45 NMAC - N, 01-31-2001]

19.25.8.46 LIMITATION OF DETERMINATION: Any determination made by the state engineer for purposes of the Underground Storage and Recovery Regulations, including the validity or non-validity of a water right, is not binding in any other proceeding separate from the Underground Storage and Recovery Regulations.

[19.25.8.46 NMAC - N, 01-31-2001]

19.25.8.47 REQUEST FOR VARIANCE: A variance to these regulations may be requested in writing by an authorized applicant or permittee. The request shall include a detailed justification for the variance and shall demonstrate that such a variance is necessary to preclude unreasonable hardship or that application of the regulations would not be practicable. The state engineer may grant the variance if the request is found to be reasonable and just. The state engineer shall respond in writing to the request for variance and, if the variance is granted, the state engineer may impose terms and conditions.

[19.25.8.47 NMAC - N, 01-31-2001]

19.25.8.48 KNOWLEDGE OF AND COMPLIANCE WITH RELEVANT STATUTES, RULES, REGULATIONS, AND CODES: It shall be the responsibility of each applicant and permittee to know of and comply with all applicable statutes, rules, regulations, and codes.
[19.25.8.48 NMAC - N, 01-31-2001]

19.25.8.49 STATE ENGINEER OPTION TO REVISE REGULATIONS: These regulations may be modified as needed to assist in administering Underground Storage and Recovery Permits. Any major revision to these regulations will be duly published and presented for public comment. Removal of a regulation or a section of these regulations, whether by a court or by the state engineer, shall not affect the validity of the remaining regulations.
[19.25.8.49 NMAC - N, 01-31-2001]